



DEBRA BOWEN | SECRETARY OF STATE | STATE OF CALIFORNIA

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March 5, 2009

Mr. Steven M. Pearson
Vice President, Certification
Election Systems and Software, Inc.
11208 John Galt Boulevard
Omaha, NE 68137

Subject: Application for administrative approval of modifications to the AutoMARK hardware and software components

Dear Mr. Pearson:

I have reviewed your application for approval of modifications to the AutoMARK hardware and software components, dated September 19, 2008.

As you know, the application seeks approval to modify the Single Board Computer (SBC) version 2.0, WinCE operating system version 5.00.14 and the boot loader, solely on newly manufactured machines. The modifications to the SBC version 2.0 includes a new internal compact flash and a new processor. The modifications to SBC version 2.0 results in a new SBC version, version 2.5. Due to the changes in the SBC, the AutoMARK must also upgrade the version of Windows operating system to WinCE 5.00.19 and the boot loader. The new proposed boot loader is manufactured by Eurotech, Inc., version 2.1.

In consideration of your request, Secretary of State Office of Voting Systems Technology Assessment (OVSTA) staff has reviewed the technical documentation for these modifications.

After completing our internal review, OVSTA staff determined that there is not sufficient evidence or confidence in the documentation and testing, conducted by SysTest labs, to determine, without further examination, that the modifications do not impair the efficiency and accuracy of the voting system.

Therefore, Election Systems and Software, Inc. (ES&S) is denied the authorization to sell and deliver the modified AutoMARKs, as described, to its California customers. I am denying the modifications at this time for the reasons set forth below. ES&S may request reconsideration of the denial, but only after they have complied with the conditions set forth below.

The grounds for denial is that ES&S hired SysTest labs to review the modifications and conduct testing, under the Federal Certification process, during the timeframe in which SysTest was under investigation by the Election Assistance Commission (EAC), for not fulfilling their obligations as an accredited Voting System Test Laboratory (VSTL). The EAC's investigation ultimately led to the suspension of SysTest labs' accreditation as a VSTL on October 31, 2008. Under the circumstances, I cannot approve use of the modified AutoMARK at this time.

The application for administrative approval of modifications to the AutoMARK hardware and software components is denied. ES&S will be permitted to apply for reconsideration of the denial if it first satisfies one of the following conditions:

- (1) ES&S may wait for SysTest labs to regain accreditation as a VSTL and then request a full review of the work already performed. SysTest labs will then have to submit a report, with sufficient evidence that they have conducted a full review of their prior testing under the new criteria approved by the EAC for SysTest as a VSTL, to the Secretary of State's office. However, if this is the option ES&S chooses to undergo, we would like to inform you that the reconsideration for approval will only be for the AutoMARK A200 with VAT firmware version 1.1.2258 and AIMS version 1.2.18, since this is the only California approved configuration that SysTest tested.
- (2) ES&S may have an accredited VSTL other than SysTest conduct a full review of the documentation and testing performed by SysTest labs and make a recommendation to the Secretary of State's office of the reuse of prior documentation and testing. This option follows the precedent set forth by the EAC for other testing conducted by SysTest labs. However, if this is the option ES&S chooses to undergo, reconsideration for approval will only be for the AutoMARK A200 with VAT firmware version 1.1.2258 and AIMS version 1.2.18, since this is the only California approved configuration that SysTest tested.
- (3) Lastly, ES&S may resubmit the modifications to an accredited VSTL so that it may perform new testing and report the findings, of that testing, to the Secretary of State's office. ES&S will have the option to submit any or all configurations approved in the State of California for retesting. The Secretary of State's office will then consider all configurations tested. This option may be combined with either of the two options mentioned above, for any additional configurations not already tested by SysTest.

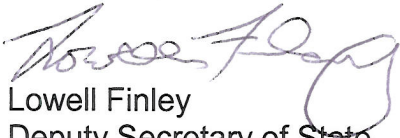
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If you have any questions or concerns regarding the approval please do not hesitate to contact OVSTA at (916) 653-7244.

Sincerely,



Lowell Finley

Deputy Secretary of State

Voting Systems Technology and Policy

cc: Mr. Brian Hancock, Director, Testing and Certification, U.S. EAC
Mr. Sheldon Johnson, Clerk-Recorder, Amador County
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